



## **H.461, An Act relating to making miscellaneous changes in education law**

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The Vermont Network strongly supports the amendment that was offered to H.461 to strengthen bullying and harassment language in our education harassment statute. In particular, we are supportive of reforms which improve our system responses to harassment and discrimination earlier – before victims experience long-range impacts.

Harassment based on a student’s protected characteristics can have long term and detrimental impacts to both their mental health and their education. In particular, the Vermont Network wishes to highlight the importance of this bill in addressing sex and gender-based harassment. Sexual harassment is a form of sexual violence. This harassment can take many different forms including unwelcome sexual advances, and sexually explicit and offensive conduct. These behaviors can create a hostile and abusive educational environment.

### **Severe and Pervasive Standard**

Last year, the Vermont Network supported efforts to address the severe and pervasive standard in Vermont law – employment, housing, and public accommodations, including educational settings. We were pleased to see the harassment standard amended for housing last year. This year, we continue to advocate for an amendment to the standard in all public accommodations, including educational settings, as addressed in this amendment.

The severe and pervasive standard, which originates from case law, creates an exceptionally high barrier for individuals to bring forth meritorious claims of sexual or gender-based harassment. Victims and survivors who have experienced long-range discrimination or singular severe instances of harassment have been prevented from bringing forth claims, due to this standard. As with many forms of sexual violence, individuals occupying more than one marginalized identity (such as race or gender identity) are impacted by issues of harassment in much more complex ways. Under the severe and pervasive standard, students with intersecting identities must prove that they were subjected to severe or pervasive harassment on each separate basis. The totality of all harassing behavior and its impact cannot be adequately addressed with the current standard.

S.103 is currently being considered in the House, it would change the severe and pervasive standard in employment and other places of public accommodation, with the exception of educational settings. If we are to change the severe and pervasive standard for employment while carving out educational settings, school employees subject to harassment and discrimination will be treated differently than students. Just to underscore- schools will become safer for their employees than students. So if a



teacher sexually harasses both a colleague and a student- the adult will have more protections from that harassment than the child.

Many sites of public accommodations, including healthcare settings and prisons have statutory and institutional policies regarding harassment and discrimination. While it is true that we are expecting new Title IX regulations to come out in the next year or so, they represent the minimum standard of protections that institutions must offer. Vermont can and should do more to offer students protection from harassment and discrimination. Students deserve the right to pursue a claim for harassment under the Public Accommodations Act.

### **Examples**

Two very impactful examples were presented in the House last week which I would like to share with you related to how this standard hurts students:

- M.H. was a ninth-grade student in New York when a classmate attacked her in a stairwell, pressing her against the wall with all of his weight and groping her all over her body. While she tried to push him off and told him to “get off.” This was very clearly a sexual assault. But a federal court held the sexual assault was not “severe” enough because “M.H. was not raped.”<sup>9</sup> In other words, the court said that any sexual assault that is not a rape is not “severe” enough.
- Jane Doe in Georgia was in tenth grade when an older student forced her to perform sexual acts on school grounds. But a federal court said the acts happened in only a “single incident.” So, it was not “pervasive” enough because Jane Doe was not attacked on 2 separate occasions.

Many other courts have come to the same conclusions. By the logic of these courts, numerous student victims of sexual assault fail the “severe or pervasive” test if: (1) they are sexually assaulted—but not raped; and (2) if they are sexually assaulted only one time. This should not be the standard that Vermont students have to meet.

### **Updating School Policies**

Because schools are also workplaces, they will have to update their policies in accordance with S.103 anyway, in order to protect school employees from workplace harassment. So, adding students to these protections would not create substantively greater burdens for schools, as they would already be updating their policies.

### **School Liability**

It feels important to note that this amendment doesn’t hold students liable for harassment or discrimination, it holds schools liable. It allows students to receive the supports and protections they need. It does not dictate how schools should follow up on that discrimination or require a certain disciplinary action to take place and we would not support it if it did.



There are many ways for schools to address harassment without discipline. First and foremost, schools should provide victim-centered responses. That means offering supportive measures to help the harassment victim feel safe at school, like a safety plan so they don't have to be in the same classroom as their harasser and don't have to run into their harasser in the hallways, at recess or lunch, in afterschool activities, and on the bus to/from school. If a harassment victim starts skipping school because they are afraid of seeing their harasser, a school can excuse those absences instead of marking the student truant. If a victim's grades have gone down or they have trouble studying or learning because of the harassment, the school can give the student a tutor to help them catch up on schoolwork or give the student an extension on their homework. If the victim failed a test because they had to sit next to their rapist or harasser in class during the test, the school can let them retake it in a different environment. These are just some of many examples of supportive measures that schools can offer. As for the harasser, the school can connect the harasser to a mental health counselor who can help the harasser understand why their behavior was wrong. The counselor could even uncover past abuse or trauma in the harasser's life that has caused them to act out and abuse others. This could help the student change their future behavior and not harass others again.

### **Student Wellbeing**

Vermont students have the right to be protected while learning. From data collected by the U.S. Department of Education, about one in five U.S. students ages 12-18 had been bullied between 2015-2019. About one in four of the students bullied between 2018-2019 were bullied due to their race, national origin, sexual orientation, religion, disability, or gender. Additional data from 2021 detailing impacts of the COVID-19 pandemic found that the risks for sexual and identity-based harassment disproportionately impact students of color, girls, and LGBTQIA+ students.

Vermont schools are not immune to harassment and its harmful impact on students. According to the Vermont results from the 2019 Youth Risk Behavior Survey (YRBS), 45 percent of students have been bullied on school property. Feeling sad or hopeless increased among Vermont high school students from 25 to 31 percent and among middle school students from 19 to 23 percent. There was an increase in the number of high school students who hurt themselves without want to die (16 to 19 percent), made a suicide plan (11 to 13 percent) and attempted suicide (5 to 7 percent). This legislation puts more tools in the toolbox for adults who want to protect children in our school systems.

By amending the Education Code to amend the "severe or pervasive" standard, you would send a strong message to all Vermont residents that harassment based on sex, race, disability, religion, age, etc. will always be taken seriously—regardless of where it occurs. **Possibly even most importantly**, you will be helping to educate kids, at a young age, that harassment, in any place, is not acceptable. This will help to ensure safer workplaces and safer public places for all Vermonters.